



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 12, 2008

MEMORANDUM

To: Thomasenia P. Duncan
General Counsel

Through: Patrina M. Clark *PM*
Staff Director

From: John D. Gibson *JG*
Chief Compliance Officer

Joseph F. Stoltz *JFS*
Assistant Staff Director
Audit Division

Tom Hintermister *TH*
Audit Manager

By: Henry Miller *HM*
Lead Auditor

Subject: American Resort Development Association Resort Owners Coalition PAC
(A05-50)- Referral Matter

AUDIT REFERRAL # 05-03

On January 28, 2008, the final audit report on the American Resort Development Association Resort Owners Coalition PAC (ARDA-ROC PAC) was forwarded to the Commission. At this time, the Commission does not have a quorum necessary to take any action on the final audit report. However, the final audit report does contain the following findings that meet the criteria for referral to your office:

- Finding 1-Misstatement of Financial Activity- In 2003, disbursements were materially understated and in 2004 both receipts and disbursements were materially understated. The cash on hand balances was also misstated throughout both years. Although ARDA-ROC PAC amended reports to correct the misstatements, the dollar values of the misstatements are sufficient to warrant referral.
- Finding 2- Receipt of Prohibited Contributions- Audit testing identified contributions totaling \$18,323 that were possible prohibited contributions from apparent corporations or foreign nationals. In response to the interim audit

10044273838

**American Resort Development Association Resort Owners Coalition
(A05-50) – Referral Matters
Page 2**

report, ARDA-ROC PAC disgorged \$18,323 to the U.S. Treasury; however, did not provide evidence of any attempt to identify any similar contributions or provide evidence of any new procedures to prevent the acceptance of such contributions.

- **Finding 3- Improper Solicitation of Contributions-** The audit identified several solicitations associated with contributions from individual timeshare owners that did not meet the requirements of the Act that contributors be advised that contributions are voluntary and that contributions from corporations, labor organizations and foreign nationals are prohibited. In response to the interim audit report, ARDA- ROC PAC indicated contributors that may have received such a solicitation would be notified and that notice requirements would be included on its website, newsletters, and bulletins. Although no specific referral threshold is applicable to this finding, the Audit staff believes this finding should be considered in conjunction with Finding 2.

All work papers and related documentation are available for review. Should you have any questions regarding this matter, please contact Henry Miller or Thomas Hintermister at 694-1200.

Attachments: Report of the Audit Division on the American Resort Development Association Resort Owners Coalition PAC

10044273839



**Report of the Audit Division on the
American Resort Development Association
Resort Owners Coalition PAC
January 1, 2003 – December 31, 2004**

**Why the Audit
Was Done**

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Committee (p. 2)

The American Resort Development Association Resort Owners Coalition PAC (ARDA-ROC PAC) is a separate segregated fund of the American Resort Development Association Resort Owners. ARDA-ROC PAC qualified for multi-candidate status on June 7, 2000 and is headquartered in Washington, DC. For more information, see the chart on the Committee Organization, p.3

Financial Activity (p. 2)

- **Receipts**
 - Contributions from Individuals \$ 2,453,210
 - Other Receipts 113,572
 - Total Receipts \$ 2,566,782
- **Disbursements**
 - Operating Expenditures \$ 1,429,575
 - Contributions to Federal Political Committees 1,020,179
 - Total Disbursements \$ 2,449,754

Findings and Recommendations (p. 4)

- Misstatement of Financial Activity (Finding 1)
- Receipt of Prohibited Contributions (Finding 2)
- Improper Solicitation of Contributions (Finding 3)

¹ 2 U.S.C. §438(b).

**Report of the Audit Division
on the
American Resort Development Association
Resort Owners Coalition PAC**

January 1, 2003 – December 31, 2004



10044273841

Table of Contents

	Page
Part I. Background	
Authority for Audit	2
Scope of Audit	2
Limitations	2
Part II. Overview of Committee	
Committee Organization	3
Overview of Financial Activity	3
Part III. Summaries	
Findings and Recommendations	4
Part IV. Findings and Recommendations	
Finding 1. Misstatement of Financial Activity	5
Finding 2. Receipt of Prohibited Contributions	8
Finding 3. Improper Solicitation of Contributions	10

10044273842

Part I

Background

Authority for Audit

This report is based on an audit of the American Resort Development Association Resort Owners Coalition PAC (ARDA-ROC PAC), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

Scope of Audit

This audit examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
4. The disclosure of disbursements.
5. The consistency between reported figures and bank records.
6. The completeness of records.
7. Other committee operations necessary to the review.

Limitations

The Audit staff sampled a limited number of contributions from individuals because ARDA-ROC PAC does not maintain a single centralized database of contributions from individuals. Contributions are not directly collected by ARDA-ROC PAC, rather, contributions are solicited and collected by resort management companies through periodic billings to timeshare owners for taxes, maintenance, and other services. These companies utilize varying and separate accounting systems in the collection of these contributions. Most contributions received by ARDA-ROC PAC are in amounts under five dollars and do not require itemization on reports. As a result of the volume of contributions and the indirect method in which they are collected, ARDA-ROC PAC does not maintain detailed records of contributions from individuals. The Audit staff's testing was limited for the receipt of possible excessive contributions, prohibited contributions, and recordkeeping. The lack of a centralized database or other record of contributions from individuals also limited the Audit staff's ability to accurately project the magnitude of testing results.

10044273843

Part II

Overview of Committee

Committee Organization

Important Dates	ARDA-ROC PAC
• Date of Registration	June 7, 2000
• Audit Coverage	January 1, 2003 – December 31, 2004
Headquarters	Washington, D.C.
Bank Information	
• Bank Depositories	Three
• Bank Accounts	Two checking ² , one investment
Treasurer	
• Treasurer When Audit Was Conducted	Sandra Yartin DePoy
• Treasurer During Period Covered by Audit	Sandra Yartin DePoy
Management Information	
• Attended FBC Campaign Finance Seminar	No
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 1, 2003	\$ 969,580
○ Contributions	2,453,210
○ Other Receipts	113,572
Total Receipts	\$ 2,566,782
○ Operating Expenditures	1,429,575
○ Contributions to Federal Political Committees	1,020,179
Total Disbursements	\$ 2,449,754
Cash on hand @ December 31, 2004	\$ 1,086,608

² ARDA-ROC PAC maintained a checking account from which a minimal amount of activity occurred. This account was closed in October of 2003.

Part III

Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

A comparison of ARDA-ROC PAC's reported activity to bank records revealed misstatements in 2003 and 2004. Reported disbursements were understated by \$190,661 in 2003 and by \$394,353 in 2004. Reported receipts were also understated by \$1,236,536 in 2004 and the cash on hand balance was misstated throughout both years. In response to the interim audit report, ARDA-ROC PAC amended reports to materially correct the misstatements. (For more detail, see p. 5)

Finding 2. Receipt of Prohibited Contributions

A limited review of contributions from individual timeshare owners resulted in the identification of contributions from apparent prohibited sources totaling \$18,323. These contributions amounts were typically less than five dollars and were received from apparent corporations and foreign nationals. Absent evidence that prohibited contributions were not received, the Audit staff recommended that ARDA-ROC PAC refund or disgorge any prohibited contribution received in 2003 and 2004. The Audit staff also recommended that ARDA-ROC PAC attempt to identify similar contributions not included in the limited contribution review and implement new procedures to prevent the acceptance of contributions prohibited by the Act. In response to the interim audit report, ARDA-ROC PAC disgorged to the U.S. Treasury the prohibited contributions identified in the limited contribution review, but documented no efforts to identify similar contributions. Further, ARDA-ROC PAC will provide its members with additional direction to prevent contributions from individuals with a foreign residence address from being accepted on ARDA-ROC PAC's behalf. ARDA-ROC PAC's response makes no mention of efforts to avoid the receipt of contributions from corporations. (For more detail, see p. 8)

Finding 3. Improper Solicitation of Contributions

Several solicitations associated with contributions from individual timeshare owners did not meet the requirement of the Act that contributors be advised that contributions are voluntary. The Audit staff recommended that ARDA-ROC PAC provide evidence that solicitations did meet this requirement. Absent such a demonstration, it was recommended that ARDA-ROC PAC contact contributors to inform them that all contributions are voluntary and offer a refund if the contributor made such a request. Further, it was recommended that ARDA-ROC-PAC amend its procedures to assure that all future solicitations meet the requirements of the Act. In response to the interim audit report, ARDA-ROC PAC provided a draft letter for distribution in the beginning of 2008 to those contributors that may have received a solicitation that did not meet the notification requirements. In addition, ARDA-ROC PAC indicated that the notice requirements would be included on its website, newsletters, and association bulletins. (For more detail, see p. 10)

10044273845

Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

A comparison of ARDA-ROC PAC's reported activity to bank records revealed misstatements in 2003 and 2004. Reported disbursements were understated by \$190,661 in 2003 and by \$394,353 in 2004. Reported receipts were also understated by \$1,236,536 in 2004 and the cash on hand balance was misstated throughout both years. In response to the interim audit report, ARDA-ROC PAC amended reports to materially correct the misstatements.

Legal Standard

Contents of Reports. Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the calendar year; and
- The total amount of disbursements for the reporting period and for the calendar year;
- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 2 U.S.C. §434(b)(1), (2), (3), (4) and (5).

Facts and Analysis

The Audit staff reconciled ARDA-ROC PAC's reported financial activity to its bank records for 2003 and 2004. The following charts outline the discrepancies:

2003 Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance @ January 1, 2003	\$ 875,286	\$ 969,579	\$ 94,293 Understated
Receipts	\$ 797,501	\$ 806,145	\$ 8,644 Understated
Disbursements	\$ 580,181	\$ 770,842	\$ 190,661 Understated
Ending Cash Balance @ December 31, 2003	\$ 1,092,606	\$ 1,004,882	\$ 87,724 Overstated

Opening Cash Balance 2003

The \$94,293 understatement for beginning cash on hand was the result of differences from prior periods.

10044273846

Receipts 2003

The understatement for receipts in 2003 was due to ARDA-ROC PAC not reporting interest earned by the investment account totaling \$8,644.

Disbursements 2003

The understatement for disbursements in 2003 was a result of the following:

- **Unreported Disbursements** – ARDA-ROC PAC did not report disbursements including \$39,500 to non-federal political committees, \$30,000 to national party committees, \$29,000 to federal candidate committees, \$22,500 to other federal political committees, and \$16,751 for operating expenditures. + \$ 137,751
- **Disbursement Reported with Wrong Amount** – ARDA-ROC PAC reported a disbursement of \$75,000 as \$7,500. + 67,500
- **Over Reported Disbursements** – ARDA-ROC PAC reported contributions made to seven federal candidates that did not clear the bank. - 11,817
- **Unexplained difference** - 2,773

Net Understatement of Disbursements

\$ 190,661

Ending Cash Balance

The \$87,724 overstatement of ending cash on hand resulted from the discrepancies described above.

2004 Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance ● January 1, 2004	\$ 1,092,606	\$ 1,004,882	\$ 87,724 Overstated
Receipts	\$ 519,028	\$ 1,755,564	\$ 1,236,536 Understated
Disbursements	\$ 1,279,485	\$ 1,673,838	\$ 394,353 Understated
Ending Cash Balance ● December 31, 2004	\$ 332,149	\$ 1,086,608	\$ 754,459 Understated

10044273847

Receipts 2004

The understatement for receipts in 2004 was the result of the following:

- **Unreported Receipts - ARDA-ROC PAC did not report contributions from individuals. These contributions did not require itemization and most were received during the April Quarterly, July Quarterly, or Year-End Reporting periods.** + \$ 1,151,881
- **Unreported Interest - ARDA-ROC PAC did not report interest received from the investment account.** + 9,655
- **Unreported Refund - ARDA-ROC PAC did not report the receipt of a refund for administrative fees. This amount was mistakenly paid to the parent organization which subsequently returned the same amount to ARDA-ROC PAC. The receipt of this refund should have been reported on line 15 and itemized on Schedule A.** + 75,000

Understatement of 2004 Receipts

\$ 1,236,536

Disbursements 2004

The understatement in 2004 for disbursements was due to the following:

- **Unreported Disbursements - ARDA-ROC PAC did not report disbursements including \$126,432 for operating expenditures, \$122,180 in transfers to the parent organization, \$100,000 to the Host Committee for 2004 Democratic National Convention, \$80,000 to party committees, \$79,750 to non-federal political committees, \$55,417 to other federal political committees, and \$28,000 to federal candidate committees.** + \$ 591,779
- **Disbursement Reported with Wrong Amount - ARDA-ROC PAC reported a disbursement of \$25,000 as \$205,000.** - 180,000
- **Over Reported Disbursements - This amount includes one contribution totaling \$5,000 to a non-federal political committee. These disbursements did not clear the bank.** - 6,040
- **Unexplained Difference** - 11,386

Net Understatement of 2004 Disbursements

\$ 394,353

10044273848

Ending Cash Balance 2004

ARDA-ROC PAC understated the ending cash balance on December 31, 2004 by \$754,460 due to the discrepancies noted above.

The Audit staff discussed the misstatement of financial activity with the ARDA-ROC PAC treasurer during fieldwork. The treasurer indicated that reporting errors may have been caused by a staff member's inexperience with FEC reporting. At the exit conference, the Audit staff provided schedules detailing the reporting adjustments to ARDA-ROC PAC representatives who indicated they would review their disclosure reports and file the necessary amendments.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that, within 30 calendar days of service of this report, ARDA-ROC PAC amend its reports to correct the misstatements. Also, ARDA-ROC PAC should amend the cash balance of its most recent report with an explanation that it resulted from the audit adjustments from a prior period. In response to the interim audit report, ARDA-ROC PAC filed amended disclosure reports that materially corrected the misstatements noted above.

Finding 2. Receipt of Prohibited Contributions

Summary

A limited review of contributions from individual timeshare owners resulted in the identification of contributions from apparent prohibited sources totaling \$18,323. These contributions amounts were typically less than five dollars and were received from apparent corporations and foreign nationals. Absent evidence that prohibited contributions were not received, the Audit staff recommended that ARDA-ROC PAC refund or disgorge any prohibited contribution received in 2003 and 2004. The Audit staff also recommended that ARDA-ROC PAC attempt to identify similar contributions not included in the limited contribution review and implement new procedures to prevent the acceptance of contributions prohibited by the Act. In response to the interim audit report, ARDA-ROC PAC disgorged to the U.S. Treasury the prohibited contributions identified in the limited contribution review, but documented no efforts to identify similar contributions. Further, ARDA-ROC PAC will provide its members with additional direction to prevent contributions from individuals with a foreign residence address from being accepted on ARDA-ROC PAC's behalf. ARDA-ROC PAC's response makes no mention of efforts to avoid the receipt of contributions from corporations.

Legal Standard

A. Contributions by corporations – Candidates and committees may not accept contributions (in the form of money, in-kind contributions or loans) from the treasury funds of corporations, this means any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative. 2 U.S.C. §441b(a)

10044273849

B. Contributions by Foreign Nationals – It is unlawful for a foreign national to make a contribution or donation to a political committee. It is also unlawful for a person to solicit, accept, or receive a contribution or donation from a foreign national. 2 U.S.C. §441e(a)

C. Handling Prohibited Contributions- All contributions must be examined to make sure they are not prohibited. Within 10 days of receiving a contribution that appears to be prohibited, the committee treasurer must either return the contribution or deposit it. 11 CFR §103.3(a). If deposited, the treasurer has 30 days from the date of the contributions receipt to confirm the legality of the contribution or issue a refund. As evidence of legality, the treasurer should obtain a written statement from the contributor explaining why the contribution is legal. Alternatively, the treasurer may obtain an oral explanation by telephone and keep a record of the conversation. 11 CFR §103.3(b)(1).

Facts and Analysis

ARDA-ROC PAC receives its contribution primarily through the property management companies who receive the contributions from timeshare owners. The contributions are included in the periodic billings for various fees that the timeshare owners pay for taxes, maintenance, and other services (See Finding 3. Improper Solicitation of Contribution). The contributions are generally three to five dollars per billing. The billing property management company then forwards the funds to ARDA-ROC PAC's connected organization without an accounting that identifies the contributors. Contributions are then forwarded to ARDA-ROC PAC without a record identifying the individual contributors.

In order to test contributions for permissibility, the Audit staff identified all homeowner associations for which the resort management companies had received and transmitted ARDA-ROC PAC contributions totaling more than \$5,000 during the audit period. From the resulting list of 81 homeowner associations, the Audit staff randomly selected 15 and requested that detailed information be obtained to support the contributions received. In response, ARDA-ROC-PAC provided contribution records for 12 homeowner associations. These records consisted of 47,715 contributions totaling \$235,517. The contributions examined account for approximately 10% of the total dollar value of contributions for the audit period. From this review, the Audit staff identified contributions totaling \$18,323 (7.8%) that appeared to be either from corporations or from foreign nationals³. This conclusion is based solely on the corporate names and foreign billing addresses contained in databases provided by the resort management companies that collected the contributions. No other records are available. It was also noted that none of the sample billing statements/solicitations contained any advisory that contributions from corporations, labor organizations, or foreign nationals are prohibited.

This matter was presented to ARDA-ROC PAC representatives at the exit conference along with related workpapers. ARDA-ROC PAC representatives commented that they would be receptive to the recommendations of the Audit staff on handling these types of receipts in the future.

³ Of the \$18,323 in prohibited contributions \$555 (3.3%) came from a resort located outside of the United States. The contribution total reviewed for this foreign resort was \$39,006.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that ARDA-ROC PAC provide documentation demonstrating that the contributions totaling \$18,323 are not prohibited. It was also recommended that ARDA-ROC PAC review all receipts for 2003 and 2004 to determine the amount of additional prohibited contributions received. Absent evidence that the contributions are not prohibited, ARDA-ROC PAC was to make refunds to the contributors or make a payment to the U.S. Treasury. ARDA-ROC PAC was to provide evidence of any refunds or disgorgement of contributions (copies of the front and back of negotiated checks). Finally, the Audit staff recommended that ARDA-ROC PAC document the implementation of procedures to prevent the acceptance of contributions prohibited by the Act. These measures were to include advising potential contributors that corporate and foreign national contributions are prohibited and obtaining the records necessary to screen its contributions.

In response to the interim audit report, ARDA-ROC PAC disgorged to the U.S. Treasury the apparent prohibited contributions identified in the limited audit testing. ARDA-ROC PAC also stated that it would provide its members with direction that no contributions from individuals with a foreign residence address shall be transmitted to ARDA-ROC PAC; however, no specifics were provided. The response also did not address any procedures to avoid the acceptance of corporate contributions or any efforts to locate and refund additional prohibited contributions.

Finding 3. Improper Solicitation of Contributions

Summary

Several solicitations associated with contributions from individual timeshare owners did not meet the requirement of the Act that contributors be advised that contributions are voluntary. The Audit staff recommended that ARDA-ROC PAC provide evidence that solicitations did meet this requirement. Absent such a demonstration, it was recommended that ARDA-ROC PAC contact contributors to inform them that all contributions are voluntary and offer a refund if the contributor made such a request. Further, it was recommended that ARDA-ROC PAC amend its procedures to assure that all future solicitations meet the requirements of the Act. In response to the interim audit report, ARDA-ROC PAC provided a draft letter for distribution in the beginning of 2008 to those contributors that may have received a solicitation that did not meet the notification requirements. In addition, ARDA-ROC PAC indicated that the notice requirements would be included on its website, newsletters, and association bulletins.

Legal Standard

A. Voluntary Contributions – A separate segregated fund is prohibited from making a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or by dues, fees, or by other monies obtained in any commercial transaction. 11 CFR §114.5(a)

B. Guidelines for Informing the Contributor – A guideline for contributions may be suggested by the separate segregated fund provided that the person soliciting or the solicitation informs the person being solicited:

10044273851

- That the guidelines are merely suggestions; and
- That an individual is free to contribute more or less than the guidelines suggest and they will not be favored or disadvantaged by reason of the amount of their contribution or their decision not to contribute; and
- Of the political purposes of the fund at the time of solicitation
- Of the right to refuse to contribute without any reprisal. 11 CFR §114.5(a)(2),(3) and(4)

Any written solicitation for a contribution to a separate segregated fund must contain all of the above statements. 11 C.F.R §114.5(a)(5).

Facts and Analysis

The Audit staff examined examples of solicitation materials provided by ARDA-ROC PAC and determined that most of these solicitations did not meet the requirement of the Act that contributors be advised that contributions are voluntary. As previously noted, ARDA-ROC PAC solicits contributions from timeshare owners through periodic billings for various property fees. ARDA-ROC PAC provided examples of solicitations from four major resort management companies that collected contributions.⁴ Due to the volume of possible solicitations involved, the Audit staff requested and reviewed only a sampling of the solicitations. Of those solicitation materials made available, only one was determined to have met the requirements at 11 CFR §114.5(a)(2),(3) and(4). This solicitation contained the specific language that the property owner "may refuse to contribute or contribute more or less without reprisal or otherwise affecting [the timeshare owner's] membership rights." This solicitation also stated that the contribution is a political contribution. None of the other solicitations complied with the regulatory requirements. Also, none of the solicitations advised timeshare owners that contributions from corporations, labor organizations, and foreign nationals are prohibited (See Finding 2 above).

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that ARDA-ROC PAC provide any additional information to indicate that its solicitations meet the requirements of the regulations concerning voluntary contributions. Absent such a demonstration, ARDA-ROC PAC was to provide its contributors with the required information for voluntary contributions outlined above and provide property owners the opportunity to request a refund. Copies of the notifications were to be submitted. It was also recommended that ARDA-ROC PAC advise resort management companies that collect its contributions of the guidelines for voluntary contributions and the need to inform contributors that contributions from corporations, labor organizations and foreign nationals are prohibited.

In response to the interim audit report, ARDA-ROC PAC provided a draft letter for distribution in the beginning of 2008 to those contributors that may have received a solicitation that did not meet the notification requirements. The draft letter includes the notice requirements for voluntary contributions and the offer of a refund to the contributor.

⁴ Some of the solicitation material from the audit period was not available. However, ARDA-ROC PAC representatives did submit examples of solicitation material used in 2006 and indicated that the solicitation materials did not change significantly from prior years.

In addition to the letter, ARDA-ROC PAC indicated that the notice requirements would be included on its website, newsletters, and association bulletins. ARDA-ROC PAC also indicated that contact was made with member organizations to ensure the use of solicitation materials that met the requirements.

10044273853